

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
LILLIAN J. BAILEY }

For Appellant: Lillian J. Bailey, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Katherine M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lillian J. Bailey against a proposed assessment of additional personal income tax in the amount of \$201.00 for the year 1975.

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In 1974 appellant's daughter, Anne Loftis, sought special academic assistance for her daughter, Deborah, then in a public elementary school. In the latter part of 1974, Anne and appellant tentatively agreed that the granddaughter should come to live with appellant so that she could attend a private school near appellant's residence.

At approximately the same time, however, authorities at the school attended by Deborah advised that she had been placed on the list of pupils eligible for extra assistance. Therefore, Anne and appellant decided that they should postpone a decision upon changed living and academic arrangements for Deborah until it was determined whether the extra assistance at the public school would resolve the problem. Meanwhile, appellant retained her apartment and gave up an opportunity to purchase a mobile home and live in an adult mobile home park in order to keep suitable living quarters available for Deborah.

Deborah's scholastic achievement had not improved by March of 1975. Consequently, Deborah then commenced living with appellant and attending the private school. It was agreed that she would do so regardless of the length of time necessary, until she could maintain the achievement level of her particular grade. This goal was accomplished upon completion of the 1975-1976 school year, and then Deborah resumed living with her mother. She had lived with appellant for approximately 15 continuous months. During this entire period appellant paid for all, or substantially all, of her granddaughter's expenses, including private school fees.

Appellant filed her California personal income tax return for the year 1974 as head of household, claiming Deborah as the person qualifying her for that status. Respondent determined that appellant did not qualify for such status in 1974 because her granddaughter had not occupied appellant's household for the entire year. Respondent allowed appellant a dependent exemption credit for the grandchild.

The term "head of a household" is defined in section 17042 of the Revenue and Taxation Code which provides, in pertinent part:

[A]n individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and ...

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(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

(1) A . . . daughter ... of the taxpayer, or a descendant of a ... daughter of the taxpayer

In prior appeals we have held that the statute, which requires that the taxpayer's home constitute the principal place of abode of another individual for the "taxable year", means that such person must occupy the household for the taxpayer's entire taxable year. (Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; Appeal of Gwen R. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Harlan D. Graham, Cal. St. Bd. of Equal., Oct. 18, 1977; see also Cal. Admin. Code, tit. 18, req. 17042-17043, subd. (b) (1).) In the present appeal appellant's granddaughter did not occupy appellant's household for the entire taxable year.

Appellant nevertheless relies upon the fact that she intended to have Deborah live with her prior to 1975, and had retained a suitable household for that purpose. She also stresses that no one else claimed head of household status with respect to Deborah during 1975, and that the granddaughter lived with her for 15 continuous months, including an entire school year, at a considerable economic sacrifice.

While we can appreciate appellant's sacrifice, the fact remains that Deborah simply did not occupy appellant's household, either actually or impliedly, for the entire taxable year. Under the circumstances, appellant did not qualify for head of household treatment in the year 1975.

For the reasons stated above, respondent's action in this matter is sustained.

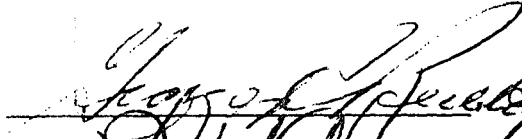
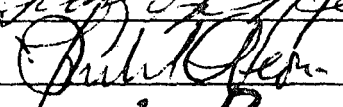
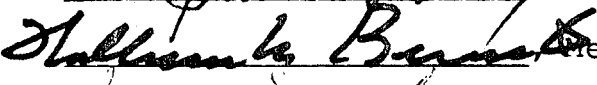
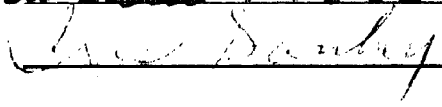
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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Lillian J. Bailey against a proposed assessment of additional personal income tax in the amount of \$201.00 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member